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Magnolia Hi-Fi, Inc.

13 [Additional Counsel Listed On Signature Page]

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 IN RE TFT-LCD (FLAT PANEL)
18 ANTITRUST LITIGATION

Master File No. 07-MD-1827 SI
MDL No. 1827

19 This Documents Relates To:

20 *Best Buy v. AU Optronics Corp. et al,*
21 Case No. 10-CV-4572,

22 *Best Buy v. Toshiba Corp. et al,*
23 Case No. 12-CV-4114

24 *Eastman Kodak Company v. Epson Imaging*
25 *Devices Corp. et al.,*
26 Case No. 10-CV-5452

27 *Target Corp., et. al., v. AU Optronics Corp. et*
28 *al.,*
Case No. 10-CV-4945

Individual Cases:

Case No. 10-CV-4572

Case No. 12-CV-4114

Case No. 10-CV-5452

Case No. 10-CV-4945

AMENDED NOTICE OF MOTIONS
AND MOTIONS IN LIMINE NO. 10)

Date: July 9, 2013

Time: 10:00 a.m.

Ctrm: 10, 19th Floor

The Honorable Susan Y. Illston

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on July 9, 2013, at 10:00 a.m., before the Honorable
 3 Susan Y. Illston, United States District Judge of the Northern District of California, San Francisco
 4 Division, located in Courtroom 10, 19th Floor, 455 Golden Gate Avenue, San Francisco,
 5 California, the Track 1B Plaintiffs¹ ("Plaintiffs") will and hereby do move the Court for an order
 6 granting a motion *in limine* exclude references to, and evidence of the ability of Plaintiffs to seek
 7 treble damages and attorneys' fees and costs.

8 This motion is based on this amended notice, supporting memorandum of points and
 9 authorities, and the other records, papers, and orders in this action, as well as such additional
 10 evidence and arguments as may be presented by the parties before or at the hearing.

11 Respectfully submitted this 1st day of July, 2013.

12 /s/ Roman M. Silberfeld

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 LLC; and Magnolia Hi-Fi, Inc.*

1 The Track 1B Plaintiffs are the Best Buy Plaintiffs, Target Corporation, Sears, Roebuck & Co.,
 Kmart Corp., RadioShack Corp., Old Comp, Inc., Newegg, Inc., Good Guys Inc., and Eastman
 Kodak Company.

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/s/ Janet I. Levine

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PRIOR RELEVANT COURT ORDERS

Pursuant to the Court's Order of April 9, 2012 (MDL Dkt. No. 5430), Plaintiffs identify the following relevant orders:

In re TFT-LCD (Flat Panel) Antitrust Litigation, No. M 07-1827 SI (Relating to All Direct-Purchaser Plaintiff Class Actions), Final Pretrial Scheduling Order (MDL Dkt. No. 5597, May 4, 2012).

I.

INTRODUCTION

Plaintiffs' Motion in Limine No. 10 (filed on June 18, 2013) is hereby amended to reflect that Plaintiff Kmart will not be seeking treble damages with respect to its Michigan state law claim, thus making any reference to trebling under federal or state law unnecessary and prejudicial. Kmart has offered to enter into a stipulation with Defendants on this point, which based on the controlling case law in this Circuit, removes the only potential basis to oppose this Motion. But Defendants have asserted, without explanation or authority, that even if Kmart waives its claim for treble damages under Michigan law, they intend to oppose the Motion. Plaintiffs are therefore compelled to file an amended motion in limine to clarify the issue for the Court.

10. Motion to Exclude References to, And Evidence of the Ability of Plaintiffs to Seek Treble Damages And Attorneys' Fees And Costs.

Plaintiffs move to exclude introduction of any evidence at trial regarding Plaintiffs' ability to recover treble damages or attorneys' fees and costs. Such evidence is irrelevant, would improperly interfere with the jury's fact-finding role, and would unfairly prejudice the Plaintiffs.² Plaintiffs' entitlement to treble damages is inadmissible in a jury trial. See, e.g., *Brooks v. Cook*, 938 F.2d 1048, 1052 (9th Cir. 1991) ("An instruction informing the jury of the trebling provision 'is an invitation to the jury to negate Congress' determination that actual damages should be trebled in order to deter antitrust violations and encourage private enforcement of the antitrust laws.'") (citation omitted); *In re Tableware Antitrust Litig.*, No. C-04-3514 VRW, 2007 WL 781960, at *3 (N.D. Cal. March 13, 2007) ("In antitrust actions, 'courts have uniformly concluded that mentioning treble damages and attorney fees to the jury is improper.'") (quoting *HBE Leasing Corp. v. Frank*, 22 F.3d 41 (2d Cir. 1994)) (internal brackets omitted); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07-md-1819 CW (N.D. Cal.) (Dec. 16,

² In an effort to streamline the presentation of evidence at trial, Plaintiff Kmart will not seek discretionary trebling for its Michigan state law damages, thus obviating the need to establish at trial that Defendants' violations are "flagrant" pursuant to Mich. Comp. Laws. Ann. 445.778.

2010), Order on Motions In Limine and for Pre-Trial Preparation, at *6 (Dkt. No. 1206) (“SRAM MIL Order”).

Likewise, the jury should not be informed of Plaintiffs’ potential right to receive attorneys’ fees. See Brooks, 938 F.2d at 1048 (“[i]n a case where the plaintiff is entitled to compensatory damages, informing the jury of the plaintiff’s potential right to receive attorneys’ fees might lead the jury to offset the fees by reducing the damage award.”); HBE Leasing Corp. v. Frank, 22 F.3d 41, 45-46 (2d Cir. 1994) (collecting case law and holding “[i]n that context [of antitrust violations] as well, courts have uniformly concluded that mentioning treble damages and attorneys’ fees to the jury is improper.”).

In the DPP Class Action Case, this Court granted a similar motion. Order dated 5/4/12 (Dkt. No. 5597, p. 4, No. 1).

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II.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their motions *in limine*.

Respectfully submitted this 1st day of July, 2013.

/s/ Roman M. Silberfeld

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